

Exhibit 16

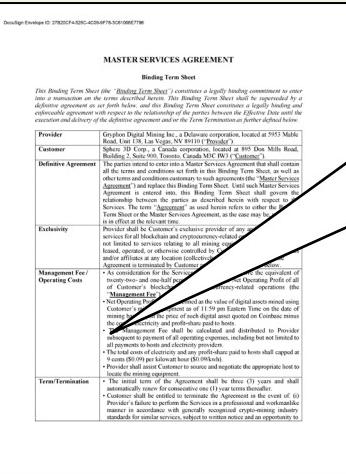
HEARING
*IN RE: CORE SCIENTIFIC, INC.,
ET AL.*

August 7, 2023

SPHERE-GRYPHON BTS DATED AUGUST 19, 2021

Exclusivity

Provider shall be Customer's exclusive provider of any and all management services for all blockchain and cryptocurrency-related operations including but not limited to services relating to all mining equipment owned, purchased, leased, operated, or otherwise controlled by Customer and/or its subsidiaries and/or affiliates at any location (collectively, the "Services") unless the Agreement is terminated by Customer as per Term/Termination below.



ORDER #2 DATED OCTOBER 5, 2021

MASTER SERVICES AGREEMENT ORDER #2

This Order, including the terms and conditions hereunder, incorporates by reference the terms of the Master Services Agreement dated as of September 12, 2021 (the “Agreement”) between Company and Client (as defined below). If any terms of this Order conflict with the terms of the Agreement, the terms of this Order shall govern with respect to this Order. Capitalized terms used but not defined in this Order shall have the meanings ascribed in the Agreement.

Commencement Date:

As of September 24, 2021 and then the fifteenth of every remaining month beginning with October 15, 2021 until November 15, 2022, respectively.

Docket Envelope ID: 0140021-4037-4035-8326-#277774258

MASTER SERVICES AGREEMENT ORDER #2
This Order, including the terms and conditions hereunder, incorporates by reference the terms of the Master Services Agreement dated as of September 12, 2021 (the “Agreement”) between Company and Client (as defined below). If any terms of this Order conflict with the terms of the Agreement, the terms of this Order shall govern with respect to this Order. Capitalized terms used but not defined in this Order shall have the meanings ascribed in the Agreement.

Commencement Date:			
Facility:	Deployment Month	Quantity & Type of Unit	Assumed power consumption (kW/hr)
Client Equipment issued**	OCT 2021	100 S17 or equivalent	2,255
	NOV 2021	100 S17 or equivalent	2,255
	DEC 2021	100 S17 or equivalent	2,255
	JAN 2022	100 S17 or equivalent	2,255
	FEB 2022	100 S17 or equivalent	2,255
	MAR 2022	2,560 S19 or equivalent	2,255
	APR 2022	2,560 S19 or equivalent	2,255
	MAY 2022	9,600 S19 or equivalent	2,255
	JUN 2022	2,560 S19 or equivalent	2,255
	JUL 2022	10,000 S19 or equivalent	2,255
	AUG 2022	10,000 S19 or equivalent	2,255
	SEPT 2022	10,000 S19 or equivalent	2,255
	OCT 2022	10,000 S19 or equivalent	2,255

Master Services Rate:
USD \$0.1617/kWh, USD \$0.1617/kWh for hosting monthly fees.
Purchase Due Prior to:
• USD \$0.1617/kWh for hosting services for NOV 2021 becomes due.
• USD \$0.1617/kWh for hosting services for NOV 2021 + FEB 2022 Units to be applied as a credit against future monthly invoices as they become due.
• \$15,286,200.00, 30% of the proposed rate for hosting services for MAR 2022, APR 2022, MAY 2022, JUN 2022, JUL 2022, AUG 2022, SEPTEMBER 2022, OCT 2022, NOV 2022, DEC 2022, JAN 2023, FEB 2023, MAR 2023, APR 2023, MAY 2023, JUN 2023, JUL 2023, AUG 2023, SEPTEMBER 2023, OCT 2023, NOV 2023 to be applied as a credit against future monthly invoices as they become due.
USD \$0.1617/kWh or before October 15, 2021 consisting:
• \$775,640.00, 40% of the proposed rate for hosting services for MAR 2022 Units to be applied as a credit against future monthly invoices as they become due.
• \$22,000.00, 30% of the proposed rate for hosting services for NOV 2021 Units to be applied as a credit against future monthly invoices as they become due.

GRYPHON-CORE MSA DATED SEPTEMBER 12, 2021

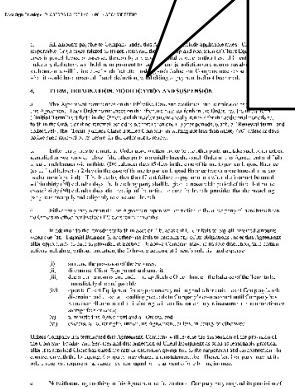
MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) effective as of September 12, 2021 (“**Effective Date**”) is between CORE SCIENTIFIC, INC. (“**Company**”) and GRYPHON DIGITAL MINING, INC. (“**Client**”).

WHEREAS, Client desires access to locate its Client Equipment (as defined below) at the Company Facility (as defined below) and receive certain Services (as defined below); and

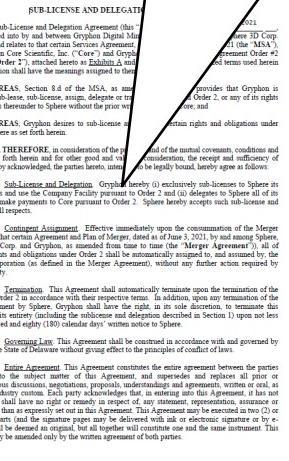
WHEREAS, Company desires to provide such Services at its Company Facility.

The parties agree as follows:



SPHERE-GRYPHON DELEGATION AGREEMENT DATED OCTOBER 5, 2021

1. Sub-License and Delegation. Gryphon hereby (i) exclusively sub-licenses to Sphere its rights to access and use the Company Facility pursuant to Order 2 and (ii) delegates to Sphere all of its obligations to make payments to Core pursuant to Order 2. Sphere hereby accepts such sub-license and delegation in all respects.



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MASTER SERVICES AGREEMENT ORDER #2

including the terms and conditions hereinafter, incorporates by reference the terms of the contract dated as of September 12, 2021 (the "Agreement") between Company and Client. If any terms of this Order conflict with the terms of the Agreement, the terms of this Order shall prevail. Capitalized terms used but not defined in this Order shall have the meaning set forth in the Agreement.

Facility/Complexity Date:	As of September 24, 2021 and the fifth year of every remaining lease beginning October 15, 2021 and November 13, 2022, respectively		
Client Equipment housed**:			
Deployment Month	Quantity & Type of Unit ("Units")	Absorbed power consumption per Unit (kW/h)	Estimated cost per Unit (USD/kWh)
OCT 2021	100 SFR w/ equipment	2.255	
NOV 2021	100 SFR w/ equipment	2.255	
JAN 2022	100 SFR w/ equipment	2.255	
FEB 2022	100 SFR w/ equipment	2.255	
MAR 2022	100 SFR w/ equipment	2.255	
APR 2022	5,000 SFR w/ equipment	2.255	
MAY 2022	2,000 SFR w/ equipment	2.255	
JUN 2022	10,000 SFR w/ equipment	2.255	
JUL 2022	10,000 SFR w/ equipment	2.255	
AGO 2022	10,000 SFR w/ equipment	2.255	
SEP 2022	10,000 SFR w/ equipment	2.255	
OCT 2022	10,000 SFR w/ equipment	2.255	
NOV 2022	10,000 SFR w/ equipment	2.255	
DEC 2022	10,000 SFR w/ equipment	2.255	
Hosting Service Rate:			
USD \$0.171/kWh (USD \$0.171/kWh after hosting month 30)			

Payment Due Prior to Installation: USD \$15,578.00 due no later than October 12, 2021 consisting of:
• \$72,350.00, 100% of the payment for hosting services for OCT 2021
Units to be applied as a credit against future monthly services as they become due.

- \$205,380.00, 79% of the prepayment for hosting services for NOV 2021 – FEB 2022 Units to be applied as a credit against future monthly invoices

- FEB 2022 Units to be applied as a credit against future monthly invoices as they become due.

- \$15,296,295.00, 30% of the prepayment for hosting services for MAR 2022 – NOV 2022 Units (\$550,239.00 for MAR 2022; \$1,100,466.00 for APR 2022; \$1,650,075.00 for MAY 2022; \$2,200,595 for each of JUN

- APR 2022 \$1,650/675.00 for MAY 2022; \$2,200/500 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022; and \$990,400.00 for NOV 2022) to be applied as a credit against future monthly invoices as

- NOV Units) to be applied as a credit against future monthly invoices as they become due.

- \$755,645.00 on or before October 12, 2021 consisting of:

- \$73,640,000, 40% of the prepayment for hosting services for MAR 2022. Units to be applied as a credit against future monthly invoices as they become due.

- \$22,000.00, 30% of the prepayment for hosting services for NOV 2021
Units to be applied as a credit against future monthly invoices as they

- Units to be applied as a credit against future monthly invoices as they become due.

- [View Details](#)

- ANSWER

- Journal of Health Politics, Policy and Law, Vol. 32, No. 4, December 2007
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- ## Pre Order #2

- ## Pre Order #2

- 5-2021

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- Sci 5, 2021

- Digitized by srujanika@gmail.com

Gryphon Core Order #2

Dated October 5, 2021

CORE'S PURPORTED REQUIREMENTS

8. Order #2 amended Section 8.d. of the MSA to permit Gryphon to assign its rights under the Agreements to Sphere without Core's written consent, but only if Sphere satisfies Core's requirements prior to any assignment of Gryphon's rights. These requirements would have included, among other things: creditworthiness, Foreign Corrupt Practices Act considerations; Know Your Customer considerations (e.g., business with Chinese entities/Chinese government); form of assignment (e.g., how and which rights and obligations were transferred, allocated or retained); whether any such assignment would implicate securities laws or constitute an investment contract; and whether any assignment would impact Core's own rights and obligations under the Gryphon Hosting Agreements.

II. No Satisfaction of Core's Requirements

7. At no time has Core entered into any agreements with Sphere for the hosting of miners or otherwise.

8. Order #2 amended Section 8.d. of the MSA to permit Gryphon to assign rights under the Agreements to Sphere without Core's written consent, but only if Sphere satisfies Core's requirements prior to any assignment of Gryphon's rights. These requirements would have included, among other things: creditworthiness, Foreign Corrupt Practices Act considerations; Know Your Customer considerations (e.g., business with Chinese entities/Chinese government); form of assignment (e.g., how and which rights and obligations were transferred, allocated or retained); whether any such assignment would implicate securities laws or constitute an investment contract; and whether any assignment would impact Core's own rights and obligations under the Gryphon Hosting Agreements.

9. To date, Sphere has not satisfied Core's requirements in connection with any assignment to Sphere of Gryphon's rights or obligations under the Agreements.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 9, 2023
Austin, Texas

By: Russell Cann
Russell Cann

CORE'S CEO ADMITS THAT THE PARTIES HAD A CONTRACTUAL RELATIONSHIP

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with Core's then-CEO Mike Levitt at the Setai hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core, including that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

5. In or around April 2022, Sphere's CEO Patricia Trompeter had a meeting with Core's then-CEO Mike Levitt in Florida. I joined part of the meeting by phone. During that meeting, Mr. Levitt characterized Sphere as Core's "customer" and indicated the parties were in a contractual relationship. Mr. Levitt also indicated that he would like to increase communications between Sphere and Core.

4. Gryphon negotiated with Core, on Sphere's behalf, for approximately 230 MW of carbon neutral bitcoin mining capacity space for Sphere's cryptocurrency miners. On October 5, 2021, Gryphon and Sphere entered into Order #2, which is attached as Exhibit 4.

5. On October 5, 2021, Gryphon and Sphere Delegation Agreement, which is attached as Exhibit 4.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with the Setai hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core. During that meeting, Mr. Levitt acknowledged that Core had not accepted Sphere's miners for hosting despite making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR BITCOIN MINING

7. In or around April 2022, Core representative claimed approximately 297 of Sphere's miners for Core's own benefit and bitcoin for Core's own account, while Core claimed was an accident. Core apologized and informed me that Core had compensated Sphere by Core's miners to Sphere's wallet "for a couple of weeks," meant proprietary miners to mine bitcoin for Sphere's benefit. As it turned out, Core did not have its own miners.

V. SPHERE PAID THE \$15.1 MILLION DEPOSIT TO CORE

8. On July 27, 2022, Brian Chase, Gryphon's CFO, in a letter conclusively affirmed that Sphere "is the sole source and beneficiary of the funds paid to Core Scientific Inc." and

for approximately 230 MW of carbon neutral bitcoin mining capacity space for Sphere's cryptocurrency miners. Before Sphere filed its Form 8-K, on October 12, 2021, at 2:03 p.m., I received an email from Rob Chang, CEO and Director of Gryphon Digital Mining Inc. ("Gryphon") with the subject "Core sign off." The email is attached to this declaration as Exhibit 2.

The email contains a screenshot of messages between Gryphon and Core Scientific Inc. ("Core") employees, including Core SVP Tariq Kubik and EVP Russell Conn. In response to the discussion about the press release, Mr. Kubik sent a "cheers" emoji and said: "You're good there!" Based on my review of Exhibit 2 at the time, I understood that Core signed off on the press release describing the Delegation Agreement.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

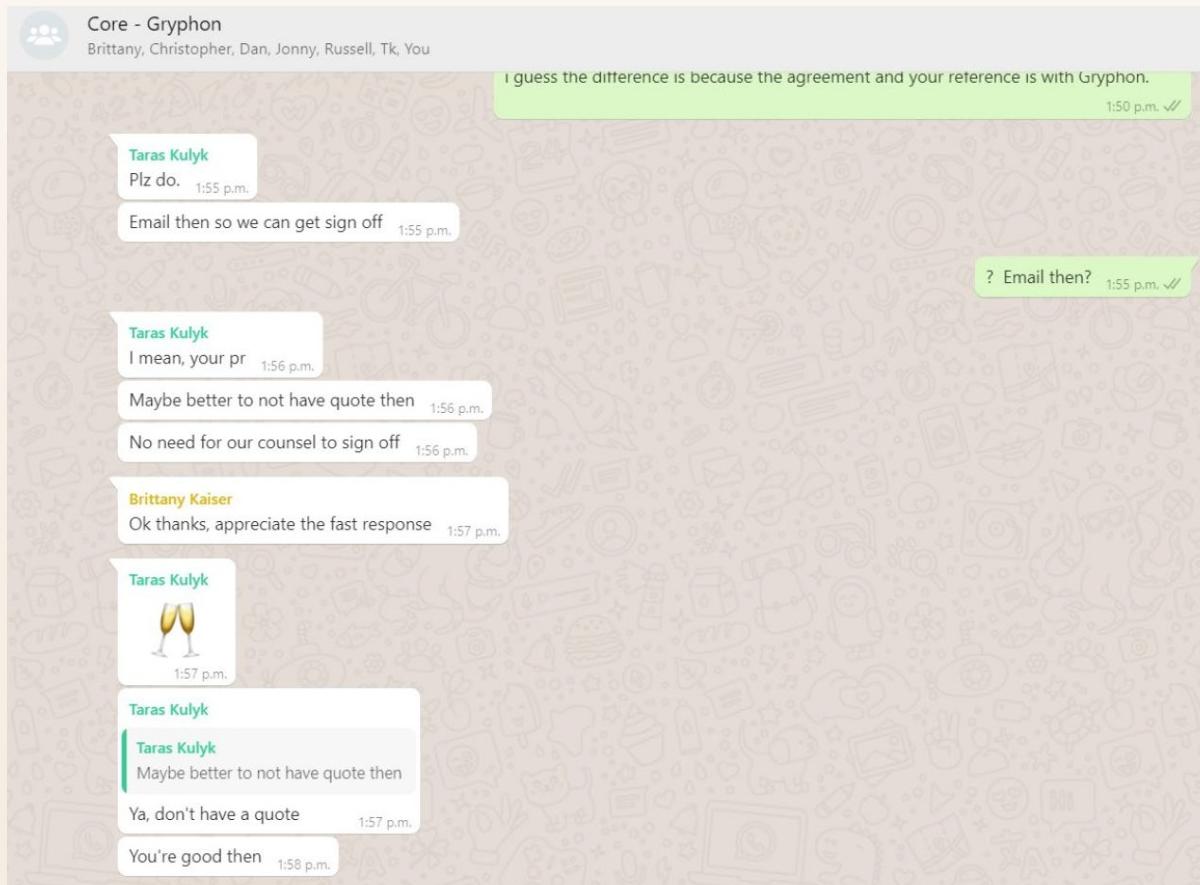
5. In or around April 2022, Sphere's CEO Patricia Trompeter had a meeting with Core's then-CEO Mike Levitt in Florida. I joined part of the meeting by phone. During that meeting, Mr. Levitt characterized Sphere as Core's "customer" and indicated the parties were in a contractual relationship. Mr. Levitt also indicated that he would like to increase communications between Sphere and Core.

Executed on: July 7, 2023

/s/ Peter Tassiopoulos

Peter Tassiopoulos

CORE APPROVES DISCLOSURE OF DELEGATION AGREEMENT



Sphere 3D and Gryphon Secure Largest Single Hosting Services Deal in Core Scientific's History

228 MW hosting agreement is largest in Core Scientific's history, with an estimated capacity of 71,000 miners

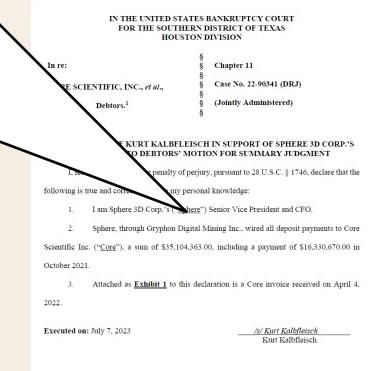
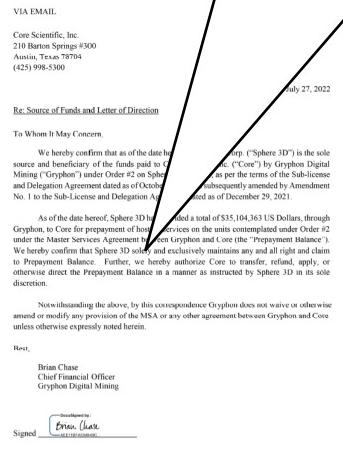
Toronto, Ontario, October 13, 2021 - Sphere 3D Corp. (Nasdaq: ANY) ("Sphere 3D" or the "Company"), a company delivering containerization, virtualization, and data management solutions, is pleased to announce that it has entered into an agreement with Gryphon Digital Mining¹ ("Gryphon") for approximately 230 MW of carbon neutral bitcoin mining hosting capacity to be managed by Core Scientific ("Core") as hosting partner. This hosting agreement is the single largest order in Core's history and represents yet another step forward for Sphere 3D and Gryphon in becoming the world's largest carbon neutral bitcoin miner.



CRYPHON CONFIRMS SPHERE HAS ALL RIGHTS TO THE DEPOSIT FUNDS

As of the date hereof, Sphere 3D has provided a total of \$35,104,363 US Dollars, through Gryphon, to Core for prepayment of hosting services on the units contemplated under Order #2 under the Master Services Agreement between Gryphon and Core (the "Prepayment Balance"). **We hereby confirm that Sphere 3D solely and exclusively maintains any and all right and claim to Prepayment Balance.** Further, we hereby authorize Core to transfer, refund, apply, or otherwise direct the Prepayment Balance in a manner as instructed by Sphere 3D in its sole discretion.

2. Sphere, through Gryphon Digital Mining Inc., wired all deposit payments to Core Scientific Inc. ("Core"), a sum of \$35,104,363.00, including a payment of \$16,330,670.00 in October 2021.



DELAWARE DOES NOT LIMIT LIABILITY FOR INTENTIONAL TORTS OR CONTRACTUAL BAD FAITH

B. As A Matter Of Public Policy, Core's Liability Cannot Be Limited For Acts Of Intentional Misconduct Or Bad Faith

45. Like other jurisdictions, Delaware courts generally permit parties to limit or eliminate liability for acts committed before a contract is entered into, but will not as a matter of public policy permit parties to prospectively limit their liability for intentional acts or acts of bad faith committed after contract execution. *See New Enter. Assocs. 14, L.P. v. Rich*, No. 2022-0406- JTL, 2023 WL 3195927, at *8. 52–54 (Del. Ch. May 2, 2023) (observing that “extant decisions hold that a provision in a commercial contract cannot eliminate tort liability for intentional or reckless conduct” and distinguishing Delaware decisions that have permitted a party entering into a contract to disclaim liability for pre-contract extracontractual fraud through non-reliance provisions); *Data Mgmt. Internationale, Inc. v. Saraga*, No. CIV.A. 05C-05-108, 2007 WL 2142848, at *5 & n.41 (Del. Super. Ct. July 25, 2007) (collecting authority and observing that if the contract “expressed an unambiguous intent to relieve [defendant] of liability for his own intentional torts, it is exceedingly doubtful that such a provision would be enforceable as a matter of public policy”); *James v. Getty Oil Co. (E. Operations)*, 472 A.2d 33, 38 (Del. Super. Ct. 1983) (“to the extent that paragraph 6 seeks to indemnify [the defendant] against its willful acts, as opposed to its negligence, the agreement is void and unenforceable”); 8 Williston on Contracts § 19:24 (4th ed.) (“An attempted exemption from liability for a future intentional tort . . . or for a future willful or grossly negligent act is generally held void.” (footnotes omitted)).

46. Sphere asserts in its Proofs of Claim that Core is liable to it based on its intentional acts, including for the tort of conversion, namely, for Core wrongfully seizing Sphere’s Deposit and other digital assets generated for the benefit of Sphere. No limitation of liability can apply to such claims. *See Saraga*, 2007 WL 2142848, at *5 & n.41 (citing *I.C.C. Metals, Inc. v. Municipal Warehouse Co.*, 409 N.E.2d 849, 853 (N.Y. 1980) (“Although public policy will in many situations countenance voluntary prior limitations upon that liability which the law would otherwise impose upon one who acts carelessly . . . such prior limitations may not properly be applied so as to diminish one’s liability for injuries resulting from an affirmative and intentional act of misconduct . . . such as a conversion. Any other rule would encourage wrongdoing by allowing the converter to retain the difference between the value of the converted property and the limited amount of liability. . . . That result would be absurd.”)); *accord Solis v. Evins*, 951 S.W.2d 44, 50 (Tex. App.—Corpus Christi 1997) (“We find no authority for the proposition that a party may prospectively contractually exculpate itself with respect to intentional torts. That would be contrary to public policy.”).

dismiss and motion for summary judgment.” *Gabrieli Tech. Sol.,* 2018 WL 11 (collecting cases).

44. In *Data Center*, the court noted that it had been “unable to determine whether a Delaware court would enforce a purported limitation on damages upon a party to a contract before the parties have taken any discovery. This Court should follow the well-modified rule that a federal court will not decide a question of state law and reject Core’s request for a preliminary injunction on the basis of a Delaware court’s likely finding on the applicability of liability provisions out of hand.”

B. As A Matter Of Public Policy, Core's Liability Cannot Be Limited For Acts Of Intentional Misconduct Or Bad Faith

45. Like other jurisdictions, Delaware courts generally permit parties to limit or eliminate liability for acts committed before a contract is entered into, but will not as a matter of public policy permit parties to prospectively limit their liability for intentional acts or acts of bad faith committed after contract execution. *See New Enter. Assocs. 14, L.P. v. Rich*, No. 2022-0406-JTL, 2023 WL 3195927, at *8. 52–54 (Del. Ch. May 2, 2023) (observing that “extant decisions hold that a provision in a commercial contract cannot eliminate tort liability for intentional or reckless conduct” and distinguishing Delaware decisions that have permitted a party entering into a contract to disclaim liability for pre-contract extracontractual fraud through non-reliance provisions); *Data Mgmt. Internationale, Inc. v. Saraga*, No. CIV.A. 05C-05-108, 2007 WL 2142848, at *5 & n.41 (Del. Super. Ct. July 25, 2007) (collecting authority and observing that if the contract “expressed an unambiguous intent to relieve [defendant] of liability for his own

PETROLEUM ADDRESSED A MATERIALLY SIMILAR LIMITATION OF LIABILITY

“The 2005 and 2011 Agreements each contain provisions waiving the parties' rights to recover lost profits, lost business opportunities, or other indirect, special, incidental, punitive, or consequential damages in connection with this Agreement.”

Petroleum v. Magellan Terminals Holdings, L.P., 2015 WL 3885947, at *22 (Del. Super. Ct. June 23, 2015) (internal quotation marks omitted).

c. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF REVENUES (EXCEPT THAT CLIENT SHALL BE LIABLE FOR ANY FEES OR OTHER AMOUNTS OWED TO COMPANY UNDER THIS AGREEMENT); (IV) LOSS, INTERRUPTION OR USE OF DATA OR LOSS OF USE OF CLIENT EQUIPMENT; (V) ANY CONSEQUENTIAL OR INDIRECT DAMAGES; OR (VI) COST OF COVER, ANY INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES (IF APPLICABLE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION ATTORNEY'S FEES) WILL NOT EXCEED THE AMOUNT PAID BY COMPANY TO DATE (\$1 MONTHS FEES PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER).

EXCEPT FOR CLIENT'S BREACH OF ITS OBLIGATIONS UNDER SECTIONS 4.5 & 5.b AND COMPANY'S BREACH OF ITS OBLIGATION UNDER SECTION 4.5.c, THE LIMITATIONS SET FORTH IN THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION ATTORNEY'S FEES) WILL NOT APPLY TO ALL CLAIMS AND CAUSES OF ACTION REGARDLESS OF WHETHER IN CONTRACT, TORT, OR OTHERWISE.

f. Client hereby waives the right to bring any claim against Company arising out of or in any way relating to an Order more than one (1) year after the date such Order expires or is terminated. Each party recognizes and agrees that the limitation of liability and remedy limitations set forth above are fair and reasonable.

g. Client acknowledges that cryptocurrency price movement, cryptocurrency difficulty, and legal and regulatory risks could have a material adverse impact on cryptocurrencies, cryptocurrency mining, Client Equipment, and the Services. Client shall not hold Company liable for any loss, damage, costs and expenses resulting from any such movement, difficulty, or risk, including but not limited to any personal injury, bodily injury or property damage caused by Client or Client's customers or clients or Client Equipment. Client shall not hold Company liable for any loss, damage, costs and expenses resulting from any such movement, difficulty, or risk, including but not limited to any personal injury, bodily injury or property damage caused by Client or Client's customers or clients or Client Equipment. (ii) any claim whatsoever by Client's customers or clients, or any third party related to the Services or Client Equipment; (iii) any change in, or interpretation or administration of any law, regulation, rule, order, or other governmental or administrative body, or any other change in, or interpretation or administration of the foregoing; or (iv) Client's installations or use of any non standard software or hardware associated with the Client Equipment.

h. Client shall indemnify, defend and hold harmless Company and its affiliates, stockholders, directors, officer, employees, subcontractors and invitees from and against any loss, liability, damage, costs and expenses resulting from (i) any claim by Client or Client's customers or clients, or any third party related to the Services or Client Equipment, for any personal injury, bodily injury or property damage caused by Client or Client's customers or clients or Client Equipment; (ii) any claim whatsoever by Client's customers or clients, or any third party related to the Services or Client Equipment; (iii) any change in, or interpretation or administration of any law, regulation, rule, order, or other governmental or administrative body, or any other change in, or interpretation or administration of the foregoing; or (iv) Client's installations or use of any non standard software or hardware associated with the Client Equipment.

i. CONFIDENTIAL INFORMATION.

Each party acknowledge that it and its employees in general may, in the course of performing its responsibilities under this Agreement be exposed to or acquire information which is proprietary to or confidential to the other party, including, without limitation, business plan, strategies, forecasts and projections, financial information, marketing plans, sales reports, customer lists, personnel information, investment strategies, software and other technology systems, and personal, customers and regulars (collectively, "Confidential Information"). Confidential Information includes, but is not limited to, the address and location of the Company Facilities (which is deemed to be not publicly known), the Services provided, equipment used at the Company Facilities, the configuration of cables, networks and services at the Company Facilities, and the Agreements. Confidential Information does not include information which is not needed to know the Confidential Information or is otherwise expressly permitted by this Agreement. Each party shall use the same measures that it uses to protect its own most confidential and proprietary information to protect the Confidential Information from use or disclosure in violation of this Agreement. No use or

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CONTRACTUAL BAD FAITH

“The case law from the Superior Court carves out an exception for bad faith breaches of contract in specific instances. . . . It is undisputed that parties cannot absolve themselves for their own conduct amounting to fraud. However, as to claims that fall somewhere short of fraud, such as claims for bad faith, the Court must undergo a factual analysis that is premature on summary judgment.”

Petroleum v. Magellan Terminals Holdings, L.P., 2015 WL 3885947, at *24 (Del. Super. Ct. June 23, 2015)

CORE MISSTATES J.A. JONES

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33. Sphere also cites *J.A. Jones*, in which the court held that a limitation of liability provision could not limit exposure for tort liability unless the intent to do so was “stated clearly and unequivocally.”

“The case law from the Superior Court carves out an exception for bad faith breaches of contract in specific instances. For example, in *J.A. Jones Const. Co. v. City of Dover*, 372 A.2d 540, in the context of interpreting a construction contract provision that did not specifically carve out an exception for bad faith, the Court observed that [e]ven if a contract purports to give a general exoneration from damages, it will not protect a party from a claim involving its own fraud or bad faith.”

Petroleum v. Magellan Terminals Holdings, L.P., 2015 WL 3885947, at *23 (Del. Super. Ct. June 23, 2015) (internal quotation marks omitted).

Even taking its allegations as true, which Core does not do, the court held that a limitation of liability provision could not limit exposure for tort liability unless the intent to do so was “stated clearly and unequivocally.” *J.A. Jones Constr. Co. v. City of Dover*, 372 A.2d 540, 546 (Del. Super. Ct. 1977); see also *Data Mgmt. International, Inc. v. Sargent*, C.A. No. 05C-05-108, 2007 WL 2142348, at *4-*5 (Del. Super. Ct. July 25, 2007). It does not stand for the proposition that a limitation of liability provision cannot limit exposure for bad faith breaches or breaches of the implied covenant of good faith and fair dealing. Instead, because the court allowed plaintiff’s claims to proceed only to the extent they fell outside the scope of the limitation of liability, *J.A. Jones* follows Delaware courts’ general reluctance to invalidate limitation of liability provisions. Here, as noted, the Limitation of Liability Provisions in the MSA are broad and clearly, expressly and unequivocally cover all claims, whether in contract, tort, or otherwise.

OTHER JURISDICTIONS DO NOT LIMIT CONTRACTUAL BAD FAITH

“Generally, a contractual provision exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy. We think the same may be said of contract liability. To conclude otherwise would incentivize wrongful conduct and damage contractual relations. This conclusion is supported by lower court decisions in Texas and court decisions in at least 28 American jurisdictions. We join this overwhelming consensus.”

Zachry Const. Corp. v. Port of Houston Auth. of Harris Cnty., 449 S.W.3d 98, 116 (Tex. 2014) (cleaned up).

“New Hampshire would adopt the rule that limitations clauses are unenforceable by a party that has acted in bad faith” and collecting cases for the proposition that numerous courts across the U.S. have applied this rule to breach claims for “bad faith” in “contract performance.”

Vermont Telephone Co., Inc. v. FirstLight Fiber, Inc., 2022 WL 19236267, at *5 (N.H. Super. Jan. 14, 2022).

“As a matter of public policy, a party should not benefit from a bargain it performed in bad faith. Accordingly, in the absence of any contrary argument or authority, we adopt this sensible rule.”

Airfreight Exp. Ltd v. Evergreen Air Ctr., Inc., 215 Ariz. 103, 111 (Ct. App. 2007) (collecting cases).

CORE STATED IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT

IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT AND SAID IT HAD COMPENSATED SPHERE, BUT NEVER DID

7. In or around April 2022, Core representatives claimed to me that Core had installed approximately 297 of Sphere's miners for Core's own benefit and used those miners to mine bitcoin for Core's own account, which Core claimed was an accident. Core EVP Russell Cann apologized and informed me that Core had compensated Sphere by "pointing extra hash" from Core's miners to Sphere's wallet "for a couple of weeks," meaning that Core had used its proprietary miners to mine bitcoin for Sphere's benefit. As it turned out, Core never did.

4. Gryphon negotiated with Core, on Sphere's behalf, to secure hosting, colocation, and rack space for Sphere's cryptocurrency miners. On October 5, 2021, Core and Gryphon, acting as Sphere's manager, entered into Order #2, which is attached as **Exhibit 3**.

5. On October 5, 2021, Gryphon and Sphere entered into the Sub-Licence and Delegation Agreement, which is attached as **Exhibit 4**.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with Core's then-CEO Mike Levitt at the Setai Hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core, including that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT AND SAID IT HAD COMPENSATED SPHERE, BUT NEVER DID

7. In or around April 2022, Core representatives claimed to me that Core had installed approximately 297 of Sphere's miners for Core's own benefit and used those miners to mine bitcoin for Core's own account, which Core claimed was an accident. Core EVP Russell Cann apologized and informed me that Core had compensated Sphere by "pointing extra hash" from Core's miners to Sphere's wallet "for a couple of weeks," meaning that Core had used its proprietary miners to mine bitcoin for Sphere's benefit. As it turned out, Core never did.

V. SPHERE PAID THE \$5.1 MILLION DEPOSIT TO CORE, WHICH GRYPHON ACKNOWLEDGED

8. On July 27, 2022, Brian Chase, Gryphon's CFO, in a letter, conclusively affirmed that Sphere "is the sole source and beneficiary of the funds paid to Core Scientific Inc." and

FRAUD BOOTSTRAPPING IS INAPPLICABLE BECAUSE NO FRAUD IS ALLEGED

attempts pursuant to the “anti-bootstrapping rule.” “[A] plaintiff cannot bootstrap a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations.” *DecisivEdge, LLC v. VNU Grp., LLC*, C.A. No. N17C-05-584 WCC CCLD, 2018 WL 1448755, at *8 (Del. Super. Ct. Mar. 19, 2018) (citing *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *8 (Del. Super. Ct. Apr. 16, 2014)) (internal quotations omitted). “[A] fraud claim alleged contemporaneously with a breach of contract claim” will therefore survive only if “the claim is based on conduct that is separate and distinct from the conduct constituting breach.” *Id.* (citations omitted). Because Sphere is attempting to shroud its breach of contract claims in the

³⁴ In short, none of the cases that Sphere cites in the Sphere Objection argument that a breach of contract, even if intentional, invalidates the Limitation Provisions.

(2) The Anti-Bootstrapping Rule Also Protects Claims

³⁵ Sphere’s arguments also fail under the “anti-bootstrapping rule,” which further demonstrates that Delaware courts vigorously reject attempts to bootstrap a claim of fraud into a claim of breach of contract. Under the rule, if a party tries to add a conclusory allegation of bad faith or intent to defraud to a standard limitation of liability provision that does not expressly extend to fraud or tort claims, Delaware courts routinely reject those attempts pursuant to the “anti-bootstrapping rule.” “[A] plaintiff cannot bootstrap a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations.” *DecisivEdge, LLC v. VNU Grp., LLC* C.A. No. N17C-05-584 WCC CCLD, 2018 WL 1448755, at *8 (Del. Super. Ct. Mar. 19, 2018) (citing *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *8 (Del. Super. Ct. Apr. 16, 2014)) (internal quotations omitted). “[A] fraud claim alleged contemporaneously with a breach of contract claim” will therefore survive only if “the claim is based on conduct that is separate and distinct from the conduct constituting breach.” *Id.* (citations omitted). Because Sphere is attempting to shroud its breach of contract claims in the language of bad faith, it cannot defeat application of the Limitation of Liability Provisions.

MSA § 5.D AND THE MAY 2023 INVOICE

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COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTHS FEE PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

Terms	Due Date	PO #	Sales Rep	
	5/22/2023	Order 1-2		
Quantity	Item	Tax Location	Tax Rate	Amount
1	Hosting Services* April 2023 Actual Usage		0%	\$84,083.25
1	Hosting Services* Reverse April 2023 Estimated Prepayment INV42894		0%	(\$82,174.34)
1	Hosting Services* Estimated June 2023 Usage Prepayment		0%	\$82,174.34
1	Replacement Parts 04/03/2023 to 05/03/2023 - Dalton, GA - Parts	Dalton, GA	7%	\$456.25
1	Replacement Service 04/03/2023 to 05/03/2023 - Dalton, GA - Labor	Dalton, GA	0%	\$87.50
Subtotal		\$84,627.00		
Tax Total (%)		\$31.94		
Total		\$84,658.94		
Amount Due		\$84,658.94		

CORE SCIENTIFIC		Invoice #IN4292.94 5/22/2023
Bill To:	Ship To:	
Gryphon Digital Mining, Inc. 5025 N. 13th Street Unit 130 Las Vegas NV 89110 United States	Gryphon Digital Mining, Inc. 5025 N. 13th Street Unit 130 Las Vegas NV 89110 United States	
Term	Due Date	PO #
	5/22/2023	Order 1-2
Tax Location	Tax Rate	Amount
	0%	\$84,658.94
Hosting Services* April 2023 Actual Usage		0% (\$82,174.34)
Hosting Services* Estimated June 2023 Usage Prepayment		0% \$82,174.34
Replacement Parts 04/03/2023 to 05/03/2023 - Dalton, GA - Parts		Dalton, GA 7% \$456.25
Replacement Service 04/03/2023 to 05/03/2023 - Dalton, GA - Labor		Dalton, GA 0% \$87.50
Subtotal		\$84,627.00
Tax Total (%)		\$31.94
Total		\$84,658.94
Amount Due		\$84,658.94

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTHS FEE PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

EXCEPT FOR CLIENT'S BREACH OF OBLIGATIONS UNDER SECTIONS 4 & 5 & 6 AND THE APPLICABILITY OF THE LIMITATIONS IN SECTION 6, THE LIMITATIONS IN SECTION 5 AND 6 WILL NOT APPLY TO ALL CLAIMS AND CAUSES OF ACTION REGARDLESS OF WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND WILL NOT EXCLUDE OR LIMIT LIABILITY FOR WILLFUL MISCONDUCT.

f. Client hereby waives the right to bring any claim against Company arising out of or in any way relating to an Order more than one (1) year after the date such Order expires or is terminated. Each party recognizes and agrees that the parties have agreed to limit the time period of liability and remedy limitations at this aforementioned provision has been prepared for the parties.

g. Client acknowledges that cryptocurrency price movement, cryptocurrency difficulty, and legal and regulatory risks could have a material adverse impact on cryptocurrencies, cryptocurrency mining, Client's equipment, software, and other technology systems, and personnel, customers and suppliers. Client agrees to indemnify and hold harmless Company from and against any loss, liability, damage, costs and expenses resulting from any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage caused by Client or Client's customers or clients or Client's equipment, software, and other technology systems, and personnel, customers and suppliers, arising out of or related to (i) any breach, bad faith, negligence or willful or reckless conduct of or by Client or Client's customers or clients or Client's equipment, software, and other technology systems, and personnel, customers and suppliers, (ii) any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage, arising out of or related to the Services or Client Equipment, (iii) any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage, arising out of or related to the Services or Client Equipment, (iv) any change in, or interpretation or administration of any law, regulation, rule, standard, or guideline, or any other applicable law, regulation, rule, standard, or guideline, or any change in, or interpretation or administration of the foregoing, or (v) Client's installation or use of any new software or hardware, including but not limited to the Client Equipment.

h. Client shall indemnify, defend and hold harmless Company and its officers, stockholders, directors, officers, employees, subcontractors and invitees from and against any loss, liability, damage, costs and expenses resulting from any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage caused by Client or Client's customers or clients or Client's equipment, software, and other technology systems, and personnel, customers and suppliers, arising out of or related to (i) any breach, bad faith, negligence or willful or reckless conduct of or by Client or Client's customers or clients or Client's equipment, software, and other technology systems, and personnel, customers and suppliers, (ii) any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage, arising out of or related to the Services or Client Equipment, (iii) any claim, demand, suit, proceeding, action, arbitration, or other proceeding, including personal injury, bodily injury or property damage, arising out of or related to the Services or Client Equipment, (iv) any change in, or interpretation or administration of any law, regulation, rule, standard, or guideline, or any other applicable law, regulation, rule, standard, or guideline, or any change in, or interpretation or administration of the foregoing, or (v) Client's installation or use of any new software or hardware, including but not limited to the Client Equipment.

i. Each party acknowledge that it and its employees or agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information which is proprietary to or confidential to the other party, including, without limitation, business plan, strategies, forecasts and projections, financial information, market research, product development, manufacturing processes, investment strategies, software and other technology systems, and personnel, customers and suppliers. (including, without limitation, the names, addresses and telephone numbers of clients, customers and suppliers, address and location of the Company Facilities (which is deemed to be not publicly known), the Services provided, equipment used at the Company facilities, the configuration of cables, networks and services at the Company facilities, and the terms and conditions of the Agreement). Such information is "Confidential Information" except to the limited extent necessary to perform its obligations under this Agreement and will not disclose such information to any third party without the prior written consent of the other party, unless such party shall use the same measures that it uses to protect its own most confidential and proprietary information to prevent the Confidential Information from being disclosed in violation of this Agreement. Each party shall use the same measures that it uses to protect its own most confidential and proprietary information to prevent the Confidential Information from being disclosed in violation of this Agreement. It is in no event

ORDER #2: DEPLOYMENT SCHEDULE

Client Equipment hosted**:	Deployment Month	Quantity & Type of Unit (the "Units")	Assumed power consumption per Unit (KWh):
	OCT 2021	100 S19 or equivalent	3.255
	NOV 2021	100 S19 or equivalent	3.255
	DEC 2021	100 S19 or equivalent	3.255
	JAN 2022	100 S19 or equivalent	3.255
	FEB 2022	100 S19 or equivalent	3.255
	MAR 2022	2,500 S19 or equivalent	3.255
	APR 2022	5,000 S19 or equivalent	3.255
	MAY 2022	7,500 S19 or equivalent	3.255
	JUN 2022	10,000 S19 or equivalent	3.255
	JUL 2022	10,000 S19 or equivalent	3.255
	AUG 2022	10,000 S19 or equivalent	3.255
	SEP 2022	10,000 S19 or equivalent	3.255
	OCT 2022	10,000 S19 or equivalent	3.255
	NOV 2022	4,500 S19 or equivalent	3.255
Hosting-Services Rate:	USD \$0.06175/ KWh; USD \$.06/KWh after hosting month 30		

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MASTER SERVICES AGREEMENT ORDER #2

This Order, including the terms and conditions hereunder, incorporates by reference the terms of the Master Services Agreement dated as of September 12, 2021 (the "Agreement") between Company and Client (as defined in the Agreement). Capitalized terms used but not defined in this Order shall have the meaning set forth in the Agreement.

Commencement Date: As of September 30, 2021 and for the duration of one remaining month beginning with October 1, 2021 and November 13, 2022, respectively.

Facility:	Deployment Month	Quantity & Type of Unit	Assumed power consumption (KWh)
Client Equipment hosted**	OCT 2021	100 S19 or equivalent	3.255
	NOV 2021	100 S19 or equivalent	3.255
	DEC 2021	100 S19 or equivalent	3.255
	JAN 2022	100 S19 or equivalent	3.255
	FEB 2022	100 S19 or equivalent	3.255
	MAR 2022	2,500 S19 or equivalent	3.255
	APR 2022	5,000 S19 or equivalent	3.255
	MAY 2022	7,500 S19 or equivalent	3.255
	JUN 2022	10,000 S19 or equivalent	3.255
	JUL 2022	10,000 S19 or equivalent	3.255
	AUG 2022	10,000 S19 or equivalent	3.255
	SEP 2022	10,000 S19 or equivalent	3.255
	OCT 2022	10,000 S19 or equivalent	3.255
	NOV 2022	4,500 S19 or equivalent	3.255

Hosting-Services Rate:

USD \$0.06175/ KWh; USD \$.06/KWh after hosting month 30

Payment Due Prior to Installation:

• USD \$0.06175/ KWh; USD \$.06/KWh after hosting month 30

• 87.5% of the proposed fee for hosting services for OCT 2021 becomes due.

• 100% of the proposed fee for hosting services for NOV 2021 - FEB 2022. Ours to be applied as a credit against future monthly invoices as they become due.

• \$15,286,200.00, 30% of the proposed fees for hosting services for MAR 2022 - MAY 2022. \$2,500.00 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022, NOV 2022, and DEC 2022. \$1,667.00 for MAY 2022. \$2,500.00 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022, NOV 2022, and DEC 2022. Ours to be applied as a credit against future monthly invoices as they become due.

• USD \$0.06175/ KWh or before October 1, 2021 consisting of:

• \$775,640.00, 40% of the proposed fee for hosting services for MAR 2022 - MAY 2022. \$2,500.00 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022, NOV 2022, and DEC 2022. Ours to be applied as a credit against future monthly invoices as they become due.

• \$22,000.00, 30% of the proposed fee for hosting services for NOV 2021. Ours to be applied as a credit against future monthly invoices as they become due.

ORDER #2: PAYMENT SCHEDULE

Payment Due Prior to Installation:

USD \$15,575,025.00 on or before October 12, 2021 consisting of:

- \$73,350.00, 100% of the prepayment for hosting services for OCT 2021 Units to be applied as a credit against future monthly invoices as they become due.
- \$205,380.00, 70% of the prepayment for hosting services for NOV 2021 – FEB 2022 Units to be applied as a credit against future monthly invoices as they become due.
- \$15,296,295.00, 30% of the prepayment for hosting services for MAR 2022 – NOV 2022 Units (\$550,230.00 for MAR 2022; \$1,100,460.00 for APR 2022; \$1,650,675.00 for MAY 2022; \$2,200,905 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022; and \$990,405.00 for NOV Units) to be applied as a credit against future monthly invoices as they become due.

USD \$755,645.00 on or before October 12, 2021 consisting of:

- \$733,640.00, 40% of the prepayment for hosting services for MAR 2022 Units to be applied as a credit against future monthly invoices as they become due.
- \$22,005.00, 30% of the prepayment for hosting services for NOV 2021 Units to be applied as a credit against future monthly invoices as they become due.

installation of the Miners, also pursuant to a set schedule set out in Order #2. In total, according to Core's records, Gryphon made payments to Core totaling \$35,264,413.57, pursuant to the fee schedule set forth in Order #2 for the hosting services. Core's banking records reflect that for

Docket Envelope ID: 0140001-4031-4035-8308-#277724258

MASTER SERVICES AGREEMENT ORDER #2			
This Order, including the terms and conditions hereunder, incorporates by reference the Master Services Agreement dated as of September 12, 2021 (the "Agreement") between Core and Gryphon. All capitalized terms used but not defined in this Order shall have the same meanings as in the Agreement.			
Commencement Date	Deployment Month	Quantity & Type of Unit	Unit Price
Facility: Client Equipment issued**	OCT 2021	100 SHA or carbon fiber	\$1,000.00 per unit
	NOV 2021	100 SHA or carbon fiber	\$1,000.00 per unit
	DEC 2021	100 SHA or carbon fiber	\$1,000.00 per unit
	JAN 2022	100 SHA or carbon fiber	\$1,000.00 per unit
	FEB 2022	100 SHA or carbon fiber	\$1,000.00 per unit
	MAR 2022	2,560 SHA or equivalent	\$1,000.00 per unit
	APR 2022	2,560 SHA or equivalent	\$1,000.00 per unit
	MAY 2022	5,600 SHA or equivalent	\$1,000.00 per unit
	JUN 2022	5,600 SHA or equivalent	\$1,000.00 per unit
	JUL 2022	5,600 SHA or equivalent	\$1,000.00 per unit
	AUG 2022	5,600 SHA or equivalent	\$1,000.00 per unit
	SEP 2022	5,600 SHA or equivalent	\$1,000.00 per unit
OCT 2022	10,000 SHA or equivalent	\$1,000.00 per unit	
Hosting Services Rate: USD \$0.01/SHA, USD \$0.005/Watt			
Payment Due Prior to Installation:			
<ul style="list-style-type: none"> • USD \$15,575,025.00 on or before October 12, 2021 consisting of: <ul style="list-style-type: none"> • \$73,350.00, 100% of the prepayment for hosting services for OCT 2021 Units to be applied as a credit against future monthly invoices as they become due. • \$205,380.00, 70% of the prepayment for hosting services for NOV 2021 – FEB 2022 Units to be applied as a credit against future monthly invoices as they become due. • \$15,296,295.00, 30% of the prepayment for hosting services for MAR 2022 – NOV 2022 Units (\$550,230.00 for MAR 2022; \$1,100,460.00 for APR 2022; \$1,650,675.00 for MAY 2022; \$2,200,905 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022; and \$990,405.00 for NOV Units) to be applied as a credit against future monthly invoices as they become due. 			
<ul style="list-style-type: none"> • USD \$755,645.00 on or before October 12, 2021 consisting of: <ul style="list-style-type: none"> • \$733,640.00, 40% of the prepayment for hosting services for MAR 2022 Units to be applied as a credit against future monthly invoices as they become due. • \$22,005.00, 30% of the prepayment for hosting services for NOV 2021 Units to be applied as a credit against future monthly invoices as they become due. 			

meant to coincide with its proposed plan. For example, for the months October through February 2022, Gryphon was to host a total of 500 Miners. In March, prior to the merger with Sphere was to close, the number of Miners to be delivered by Gryphon increased with 2,500 in March, 5,000 more in April, 7,500 more in May, and then 10,000 more in the months of June through October 2022, capping off with 4,500 in November 2022.

Order #2 requires that Gryphon make certain payments to Core prior to installation of the Miners, also pursuant to a set schedule set out in Order #2 for the hosting services. Core's banking records reflect that for each of these payments, the wire transfers came from Gryphon, not Sphere. One of the purposes of these prepayments is to ensure some level of performance by the counterparty, in this case Gryphon, given the enormous undertaking and investment Core must make to prepare its facilities for the number of expected units. It also serves as a form of down-payment for the services Core was to provide. In short, Gryphon signed a contract with Core to deliver and have Core host 70,000 units—a significant amount—and Core needed some assurance of performance.

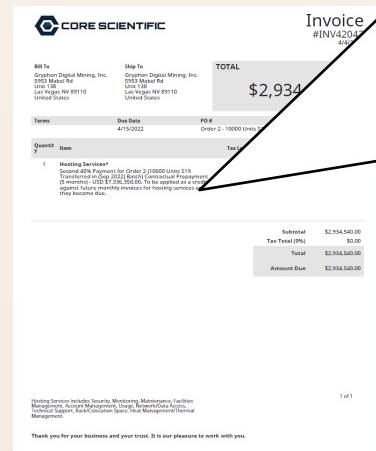
B. The Gryphon/Sphere Agreements

On June 3, 2021, Gryphon and Sphere entered into their Merger Agreement. Core is not a party to that agreement. Pursuant to that agreement, Gryphon was to merge with a Sphere subsidiary created for the merger, with Gryphon surviving as the "Surviving Corporation" as defined in the Merger Agreement.

On October 5, 2021, Gryphon entered into the Sub-License Agreement with Sphere in connection with the contemplated merger between the two companies. Although the MSA contains a provision explicitly prohibiting the assignment of the Gryphon Hosting

Core's Objection to Sphere's Proof of Claim ¶ 19
Dated May 9, 2023

Terms	Due Date	PO #	Sales Rep	
	4/15/2022	Order 2 - 10000 Units S19		
Quantity	Item	Tax Location	Tax Rate	Amount
1	Hosting Services* Second 40% Payment for Order 2 (10000 Units S19 Transferred in (Sep 2022) Batch) Contractual Prepayment (5 months) - USD \$7,336,350.00. To be applied as a credit against future monthly invoices for hosting services as they become due.		0%	\$2,934,540.00
<hr/>				
Subtotal				\$2,934,540.00
Tax Total (0%)				\$0.00
Total				\$2,934,540.00
Amount Due				\$2,934,540.00



PROVISIONS MENTIONING FEES

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IN MSA & ORDER #2

3. PAYMENT TERMS AND TAXES

a. Company will invoice Client monthly in advance for all applicable fees for use of Company Facility and provision of Services as set forth in the applicable Order. Client will pay all invoiced amounts in US dollars within ten (10) calendar days of the date of the invoice. All payments must be (i) in US dollars into an ACH account number as set forth in the applicable Order; or (ii) to another account or form of payment directed by Company. Interest shall be charged on past due amounts at the lesser of (A) one and a half percent (1.5%) per month; or (B) the highest rate permitted by applicable law.

d. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT,

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTHS FEE PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

Fees. Client shall pay the fees provided for in this Order. The Fees for Services will be determined initially by reference to the Assumed power consumption per Unit of each deployed Unit, multiplied by the Hosting-Services Rate (each as set forth above in this Order). Subsequent invoices will contain any additional charges incurred by Client and adjustments resulting from any differences between the Fees for Services invoiced in the preceding month and the Fee for Services based on Company's determination of power utilized by Client during that month, as well as any adjustments to Company's estimate of power to be utilized by Client in the upcoming month. Fees for Services for each month shall be paid in advance, in accordance with Section 3 of the Agreement.

THE ABSENCE OF DISCOVERY DEFEATS CORE'S MOTION

CORE'S RULE 56(D) CASES ARE DISTINGUISHABLE

"We begin our analysis by pointing out that this case had been pending for over fifteen months....The record indicates that [plaintiff] had reviewed over half a million FMC documents and had also subpoenaed documents from twenty municipal airport authorities. It had also conducted several depositions."

Stearns Airport Equip. Co. v. FMC Corp., 170 F.3d 518, 535 (5th Cir. 1999)

"[Claimant] failed to diligently pursue further discovery during the two-month continuance the district court provided.... She had the benefit of nearly 1,000 pages of deposition testimony and records."

Dominick v. Mayorkas, 52 F.4th 992, 995–96 (5th Cir. 2022)

"Although Plaintiffs argued in the district court that discovery was not complete, they failed to file a motion for continuance under Rule 56(d) or otherwise specify what discovery was necessary to produce evidence on a material issue. . . . But even if Plaintiffs had filed the proper motion, the district court had sound reasons for not delaying a ruling by allowing further discovery. The time provided for discovery was ample."

Bishop v. City of Galveston, 595 F. App'x 372, 377 (5th Cir. 2014)